



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2023-0023]

Expansion and Extension of the Climate Change Mitigation Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 3, 2022, the United States Patent and Trademark Office (USPTO) implemented the Climate Change Mitigation Pilot Program as a component of its ongoing efforts to encourage and incentivize innovation in the climate space and as an example of its commitment to policies tackling climate change. The initial phase of the program—ending June 5, 2023—has sought to positively impact the climate by accelerating the examination of patent applications for products and processes designed to reduce greenhouse gas emissions. Through this notice, the USPTO is expanding the program to include innovations in any economic sector that are designed to make progress toward achieving net-zero greenhouse gas emissions. This includes innovations designed to remove greenhouse gases already present in the atmosphere; reduce and/or prevent additional greenhouse gas emissions; and/or monitor, track, and/or verify greenhouse gas emission reductions. The USPTO is also increasing the filing limitations for petitions under the program and extending the duration of the program. These changes will permit more applications to qualify for the program, thereby allowing more innovations that will aid in achieving national climate goals to be advanced out of turn for examination. As with the existing program, applications accepted into the expanded program will be advanced out of turn (accorded special status) for first action on the merits. The conditions, eligibility requirements, and guidelines of the expanded program will be the same as those established for the existing program, unless modified by this notice. By

expanding and extending the program, the USPTO aims to emphasize the urgency of zero- and negative-emissions solutions, and further encourage investment in an equitable, clean energy future.

DATES: *Pilot Duration:* The Climate Change Mitigation Pilot Program, as expanded by this notice, will run from June 6, 2023, until either June 7, 2027, or the date the USPTO accepts a total of 4,000 grantable petitions (considering both the existing and expanded programs), whichever occurs first. The USPTO may, at its sole discretion, terminate the program depending on factors such as workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the program is terminated, the USPTO will notify the public. The USPTO will continue to indicate on its website the total number of petitions filed and the number of applications accepted into the program.

FOR FURTHER INFORMATION CONTACT: Kristie A. Mahone, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-272-9016 or Kristie.Mahone@uspto.gov; or Susy Tsang-Foster, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571-272-7711 or Susy.Tsang-Foster@uspto.gov. For questions on electronic filing, please contact the Patent Electronic Business Center at 866-217-9197 during its operating hours of 6 a.m. to midnight ET, Monday-Friday, or ebc@uspto.gov. For questions related to a particular petition, please contact the Office of Petitions at 571-272-3282 during its operating hours of 8:30 a.m. to 5 p.m. ET, Monday-Friday.

SUPPLEMENTARY INFORMATION:

Part I. Background

Executive Order 14008, dated January 27, 2021, calls for immediately reducing greenhouse gas emissions and achieving net-zero greenhouse gas emissions no later than

2050. *See* E.O. 14008 of January 27, 2021: Tackling the Climate Crisis at Home and Abroad, 86 FR 7619 (Feb. 1, 2021). Net-zero greenhouse gas emissions means that the measure of greenhouse gas emitted into the atmosphere is counterbalanced by the measure of greenhouse gas removed from the atmosphere. While accelerating innovations designed to reduce emissions is of foremost importance, solutions for removing greenhouse gases from the atmosphere are critical because of the unlikelihood of eliminating emissions in all sectors. *See* The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050 (Nov. 2021), available at www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf (2021 Long-Term Strategy).

In 2022, the USPTO published a notice implementing the Climate Change Mitigation Pilot Program, which aligns with and supports Executive Order 14008. *See* Climate Change Mitigation Pilot Program, 87 FR 33750 (June 3, 2022) (2022 Notice). The initial phase of the program has focused on innovations that reduce greenhouse gas emissions. Specifically, the existing program permits an application that claims certain products and/or processes designed to reduce greenhouse gas emissions to be advanced out of turn (accorded special status) for first action on the merits without meeting all of the requirements of the accelerated examination program, if the applicant files a petition to make special under 37 CFR 1.102(d) that meets all the requirements in the 2022 Notice. In the petition to make special, the applicant must certify that: (1) the claimed invention covers a product or process that mitigates climate change, (2) the product or process is designed to reduce greenhouse gas emissions, (3) the applicant has a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate, and (4) the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than four other nonprovisional applications in which a petition to make special under this program has been filed. The USPTO,

however, committed to periodically evaluating the program to determine whether and to what extent coverage should be expanded or limited.

Part II. Expansion of the pilot program

A. Subject matter coverage

As stressed in the 2021 Long-Term Strategy, reaching net-zero greenhouse gas emissions by 2050 necessitates a robust pursuit of removal solutions, given the unlikelihood of completely eliminating greenhouse gas emissions from some activities. Further, technologies designed to monitor, track, and/or verify greenhouse gas emission reductions are anticipated as necessary expedients. *See* U.S. Innovation to Meet 2050 Climate Goals: Assessing Initial R&D Opportunities (Nov. 2022), available at www.whitehouse.gov/wp-content/uploads/2022/11/U.S.-Innovation-to-Meet-2050-Climate-Goals.pdf. Considering the criticality of tackling climate change and the experiential knowledge of the USPTO resources needed to deliver accelerated review in the climate space, the USPTO is expanding the program to include a broader range of technologies designed to make progress toward achieving the goal of net-zero emissions. Specifically, the USPTO is replacing the second certification set forth in the 2022 Notice with a certification “that the product or process is designed to: (a) remove greenhouse gases already present in the atmosphere; (b) reduce and/or prevent additional greenhouse gas emissions; and/or (c) monitor, track, and/or verify greenhouse gas emission reductions.” Applicants must continue to certify that the claimed invention covers a product or process that mitigates climate change, and that they have a good faith belief that expediting patent examination of the application will likely have a positive impact on the climate, as set forth in the 2022 Notice.

B. Filing limitations

The USPTO is also increasing the filing limitations to afford more opportunities to participate. In particular, an applicant may file a petition to participate in the program

if the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than 12—up from 4—other nonprovisional patent applications in which a petition to make special under this program has been filed. Specifically, the USPTO is replacing the fourth certification set forth in the 2022 Notice with a certification “that the inventor or any joint inventor has not been named as the inventor or a joint inventor on more than 12 other nonprovisional applications in which a petition to make special under this program has been filed.” If the inventor or any one of the joint inventors of the current application has been named as the inventor or a joint inventor on more than 12 other nonprovisional patent applications in which petitions under this program have been filed, then the petition for the current application may not be appropriately filed. Any petitions filed during the existing program count toward the filing limitations in the expanded program.

C. Office form required for filing a petition

Petition form PTO/SB/457, titled “CERTIFICATION AND PETITION TO MAKE SPECIAL UNDER THE CLIMATE CHANGE MITIGATION PILOT PROGRAM,” is still required to make the petition under the program. Other than the changes to the subject matter coverage and the filing limitations described above, the conditions, eligibility requirements, and guidelines of the program will be the same as those provided in the 2022 Notice. The USPTO will modify the certifications contained in petition form PTO/SB/457—at numbered items 2 and 11—to correspond with the changes described above. The modified petition form will be available for use on June 6, 2023, at www.uspto.gov/patents/apply/forms.

The USPTO reminds applicants that under the 2022 Notice, the petition to make special (form PTO/SB/457) must be electronically filed using Patent Center, with the application or entry into the national stage under 35 U.S.C. 371, or within 30 days of the filing date or entry date of the application. The USPTO encourages applicants interested

in participating in the program to review the 2022 Notice, along with the information provided on the program's webpage, at www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program.

Part III. Extension of the pilot program

The program, as expanded by this notice, will run from June 6, 2023, until either June 7, 2027, or until the date that the USPTO accepts a total of 4,000 grantable petitions, whichever occurs first. The total of 4,000 grantable petitions includes petitions granted under the existing and expanded programs combined. Information concerning the number of petitions that have been filed and granted under the program will continue to be available on the program's webpage. The USPTO may further extend the program (with or without modifications) depending on feedback from the participants and the effectiveness of the program.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023-11660 Filed: 5/31/2023 8:45 am; Publication Date: 6/1/2023]